

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ANTHONY SUMMERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59470

FILED

MAR 30 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingold*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

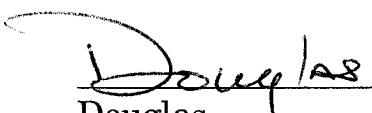
Appellant filed his petition on June 15, 2011, more than four years after issuance of the remittitur on direct appeal on January 23, 2007. See Summers v. State, 122 Nev. 1326, 148 P.3d 778 (2006). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

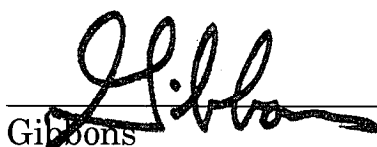
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

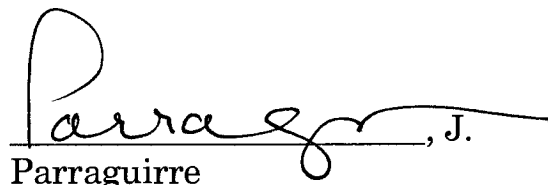
²See Summers v. State, Docket No. 51520 (Order of Affirmance, August 25, 2009).

Appellant failed to demonstrate any impediment external to the defense sufficient to establish good cause for his delay in filing his petition. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). That appellant was seeking to exhaust claims in order to proceed federally did not provide good cause. See generally Colley v. State, 105 Nev. 235, 235-36, 773 P.2d 1229, 1230 (1989). Accordingly, the district court did not err in denying appellant's petition as procedurally barred. Therefore, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

In addition, we conclude that the district court did not abuse its discretion in denying appellant's motion for the appointment of counsel to assist in the preparation of the instant petition. To the extent appellant also attempted to appeal from the district court's denial of his previous motion for the appointment of counsel in its order of March 28, 2008, this court has already considered, and affirmed, the March 28, 2008, order. Summers v. State, Docket No. 51520 (Order of Affirmance, August 25, 2009). The deadline to file a petition for rehearing from that decision has long since passed. NRAP 40(a)(1).

cc: Hon. Valerie Adair, District Judge
Charles Anthony Summers
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk